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U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 21 1993
MIGUEL J. CORTEZ
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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 92-6156
Non-Argument Calendar

D.C. Docket No. CR-91-00262-N

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REGINA CHAMBERS,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Alabama

(January 21, 1993)

Before FAY, KRAVITCH and ANDERSON, Circuit Judges.

PER CURIAM:

Appellant, a black female, was convicted on charges arising from the transportation of "crack cocaine." On appeal she raises five issues:

1. Equal protection challenge to 100:1 ratio of crack to cocaine powder in determining base offense level

2. Denial of downward departure

3. Base offense level adjustment for minor role

4. Sufficiency of the evidence

5. Failure to give requested jury instruction

We have upheld those portions of the Sentencing Guidelines which equate 50 grams of "crack cocaine" with 5,000 grams of ordinary cocaine under the rational basis test. United States v. Kins, 972 F.2d 1259, 1260 (11th Cir. 1992). Appellant does make the additional arguments that Congress and the Sentencing

Commission acted with discriminatory purpose in establishing this enhancement for crack and that it should receive a heightened review. There is simply nothing in this record to support these arguments and they are rejected.

Appellant contends that the district court erred when it refused to make a downward departure on the basis of the weakness of the government's case. A sentencing judge's refusal to make such a downward departure is not appealable. United States v. Fossett, 881 F.2d 976, 979 (11th Cir. 1989). In addition, the weakness of the government's case is not a factor in arriving at an appropriate sentence. United States v. Brooks, 966 F.2d 1500, 1505 (D.C. Cir. 1992).

The district court found that appellant was entitled to be treated as a minor participant in the criminal conduct but refused to accord her status as a minimal

actor. This finding is not clearly erroneous.

The record shows that the evidence was more than sufficient to support the verdict and there was no error in refusing to give appellant's requested jury instruction dealing with suspicion, guesswork and speculation.

There being no merit in the contentions raised, we affirm the judgment of the district court.

Affirmed.